

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the **Matter** of the Appeal of)
GLORIA J. **OLIVERIA**)

For Appellant: Gloria J. Oliveria,
in pro, per,

For Respondent: James T. **Philbin**
Supervising Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Gloria J. Oliveria for refund of personal income tax in the amount of \$149.00 for years prior to 1979.

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The issue presented is whether appellant is entitled to renter's credits for years prior to 1979.

Appellant has filed five claims for refund for renter's credit for years prior to 1979. During those years, appellant received payments under the Supplemental Security Income and State Supplemental Payment programs ("**SSI/SSP**"). Respondent refused the claims on the ground that, prior to 1979, recipients of such payments did not qualify for the renter's credit. Appellant filed this appeal.

The Revenue and Taxation Code provides a credit for certain individuals who were California residents on March 1 of the taxable year for which the credit was claimed, and who rented their principal **places** of residence. (Rev. & Tax. Code, **§ 17053.5.**) Prior to its amendment in 1979, subdivision (c) of section 17053.5 provided that an individual was not entitled to the renter's credit for any period of time during which he received "public assistance grants which took into account housing or shelter needs." Thus, if SSI/SSP payments are **public** assistance which take housing needs into account, appellant is not entitled to any **renter's** credit.

Initially we note that respondent cites an unpublished opinion of the Court of Appeal in support of its position. We cannot consider this decision since decisions which the California Supreme Court has ruled should not be published have no precedential value. (People v. Valenzuela, 86 Cal.App.3d 427 [150 Cal.Rptr. 3141 (1978)]; People v. North Beach Bonding Co., 36 Cal. App.3d 663 [111 Cal.Rptr. 757] (1974).) However, our research has led this board to agree with respondent that the **SSI/SSP** programs do take housing **needs into** account.

SSI is a federal program which provides assistance to the elderly, blind and disabled. (42 U.S.C. **§§ 1381, 1381(a).**) SSP is a program administered by the federal government whereby the state makes supplemental payments to the same recipients. (Welf. & Inst. Code, **§§ 12000, et seq.**)

The SSI/SSP programs **take housing needs** into account in two ways. First, the maximum payment under each program takes into account the average cost of housing. The maximum SSI payment is determined by reference to a base figure which is adjusted to reflect

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changes in the Consumer Price Index. (42 U.S.C. §§ 1382(f), 415(i).) Since the Consumer Price Index is affected by changes in the average cost of housing, the amount of the maximum **SSI payment** varies in accordance with average housing costs. Similarly, the maximum SSP payment **is calculated** by adjusting a base figure in accordance with changes in the separate Consumer Price Indices (all items) for Los Angeles-Long Beach and San Francisco-Oakland. (Welf. & Inst. Code, § 12201.) One of the Consumer Price Indices is the housing index. Thus, the SSP program also considers average housing **costs**. The second manner in which the SSI/SSP programs consider housing needs is that both programs reduce an individual's payments if that individual receives free housing. (42 U.S.C. § 1382(a)(2)(A); Welf. & Inst. Code, § 12200, subd. (i).) From this, we conclude that a portion of the **SSI/SSP** payments is intended to provide recipients with funds to be used to meet their housing needs,

Since the SSI/SSP programs take housing needs into account, and since appellant received payments under these programs during the years at issue, appellant is **not** entitled to a renter's credit for these years.

For the foregoing reasons, the action of the Franchise Tax Board must be sustained.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND **DECREED**, pursuant to section 19060 of the Revenue and Taxation Code, that the actions of the Franchise Tax Board in denying the claims of Gloria J. Oliveria for refund of personal income tax in the amount of \$149.00 for years prior to 1979, be and the same are hereby sustained.

Done at Sacramento, California, this 31st day of March , 1982, by the State Board of Equalization, with Board Members Mr. Reilly, Mr. Dronenburg and Mr. Nevins present.

_____, Chairman
George R. Reilly _____, Member
Ernest J. Dronenburg, Jr. _____, Member
Richard Nevins _____, Member
_____, Member